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Commission on Investment, Technology
and Related Financial Issues
Intergovernmental Group of Experts
on Competition Law and Policy
Geneva, 29-31 July 1998
Item 2 of the provisional agenda

ADOPTION OF THE AGENDA AND ORGANIZATION OF WORK

Provisional agenda and annotations

I. PROVISIONAL AGENDA

1. Election of officers

2. Adoption of the agenda and organization of work

3. (i) Consultations on competition law and policy, including the Model Law and studies related to the provisions of the Set of Principles and Rules

   (ii) Work programme, including technical assistance, advisory and training programmes on competition law and policy

4. Provisional agenda for the next session

5. Adoption of the report of the Intergovernmental Group of Experts

GE.98-50720 (E)

Item 1. Election of officers

The Intergovernmental Group of Experts will elect a Chairman and Vice-Chairman-cum-Rapporteur.

Item 2. Adoption of the agenda and organization of work

The Expert Meeting on Competition Law and Policy (24-26 November 1997) approved the provisional agenda for the Intergovernmental Group of Experts on Competition Law and Policy, which is reproduced in section I above. It should be recalled in this connection that the General Assembly of the United Nations, in its resolution 52/182 of December 1997, decided, in line with the recommendations of the Third United Nations Conference to Review All Aspects of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices (21 November 1995), (i) to change the title of the Intergovernmental Group of Experts on Restrictive Business Practices to that of Intergovernmental Group of Experts on Competition Law and Policy, and (ii) to convene a Fourth United Nations Conference on the RBP Set. The Conference would take place under UNCTAD auspices in the year 2000.

Organization of work

In line with paragraph 114 of "A Partnership for Growth and Development" (TD/378/Rev.1), the session of the Intergovernmental Group of Experts on Competition Law and Policy will last three days. The first plenary meeting will open at 10 a.m. on Wednesday, 29 July 1998, and be devoted to procedural matters (items 1 and 2 of the provisional agenda) and to introductory statements. The closing plenary meeting, on 31 July, will be devoted to the work programme (item 3 (ii)) and to the adoption of the report (item 4). 1/

This will leave the remaining meetings, from the afternoon of 29 July to the morning of 31 July inclusive, for consultations on competition law and policy, including studies related to the provisions of the Set of Principles and Rules (item 3 (i) of the provisional agenda). If more time is needed, the adoption of the report could be postponed to late afternoon of 31 July, in order for an informal working session to take place that afternoon. A timetable will be available on the first day of the meeting.

Item 3 (i). Consultations on competition law and policy, including the Model Law and studies related to the provisions of the Set of Principles and Rules

In paragraph 5 (b) of the agreed conclusions adopted by the Expert Meeting on Competition Law and Policy on 26 November 1997 (TD/B/COM.2/9-TD/B/COM.2/EM/12, annex I), the UNCTAD secretariat was requested to prepare for consideration by the Intergovernmental Group of Experts a revised version of the study on "Empirical evidence of the benefits from applying competition law and policy principles to economic development in order to attain greater efficiency in international trade and development" on the basis of comments made at that meeting and written information to be

received by 31 January 1998. Accordingly, the study prepared by the UNCTAD secretariat on this issue (TD/B/COM.2/EM/10/Rev.1) will be submitted for consideration by the Experts.

Further, under paragraph 5 (d) of the same agreed recommendations, the experts requested the secretariat to continue to publish as non-sessional documents and to make available on the Internet:

(i) Further issues of the Handbook on Competition Legislation, including regional and international instruments;

(ii) A revised version of the Commentary to the Model Law, taking into account new trends in merger control;

(iii) An updated version of the Directory of Competition Authorities; and

(iv) An information note relating to recent important competition cases, with special reference to competition cases involving more than one country, taking into account information to be received from member States.

A further issue of the Handbook containing the competition laws and appropriate commentaries of Algeria, Côte d'Ivoire and Hungary was published as document TD/B/COM.2/EM/11, and a revised version of the Model Law was published as document TD/B/RBP/81/Rev.5. A further compilation of the Handbook, a new edition of the Model Law, as well as an updated Directory and information note, will be issued shortly.

Finally, under this item of the agenda, as requested by the Expert Meeting in November 1997, specific consultations are to be held on three subjects, as follows:

(a) The principle of positive comity;

(b) Remedies and sanctions for antitrust violations;

(c) The treatment of abuse of dominance/monopolization analysis, including price discrimination, with special reference to cases affecting more than one country.

Should countries wish to hold consultations on additional subjects, they are requested to inform the secretariat well in advance (no later than 15 June 1998) in order for all participants to be able to prepare themselves for such consultations. Moreover, for each of the subjects referred to above, the secretariat would encourage experts from both developed and developing countries, as well as countries in transition, to make oral presentations supported by short written contributions to be made available during the consultations.

Item 3 (ii). Work programme, including technical assistance, advisory and training programmes on competition law and policy

Under this item, the Intergovernmental Group of Experts is expected to give guidance to the UNCTAD secretariat as to further work to be undertaken on competition law and policy.

In particular, the experts will have before them an updated review of technical assistance, taking into account the information submitted by States and international organizations, as requested in paragraph 5 (a) of the agreed conclusions of the November 1997 Expert Meeting (TD/B/COM.2/CLP/2) and a preliminary report of a study on "Experiences gained so far with international cooperation on competition policy issues and the mechanisms used", as requested in paragraph 5 (c) of the agreed conclusions of the November 1997 Meeting (TD/B/COM.2/CLP/3).

On the basis of the review of technical cooperation, the Experts will be invited to give guidance to the secretariat on how best to assist developing countries in formulating national competition legislation and regional competition rules, as well as how best to identify financial and technical resources for their implementation. The preliminary report of a study on "experiences" will provide the basis for the Experts to give the secretariat information on the actual implementation of formal or informal arrangements for bilateral, regional, plurilateral and multilateral cooperation in the field of competition law and policy.

In considering the work programme, the Intergovernmental Group of Experts might also wish to reflect on specific steps which might be taken in preparation for the Fourth United Nations Conference to Review the Set, which is scheduled to take place in the year 2000. In particular, the Intergovernmental Group of Experts might wish to discuss issues related to the "development dimension" in competition law and policy.

Item 4. Provisional agenda for the next session of the Intergovernmental Group of Experts

As is customary, the Intergovernmental Group of Experts is expected to adopt the provisional agenda for its next session.

Item 5. Adoption of the report of the Intergovernmental Group of Experts

The Intergovernmental Group of Experts on Competition Law and Policy is required to report to the Commission on Investment, Technology and Related Financial Issues. 1/

Note

1/ In view of the short duration of the session, the Rapporteur would be authorized to complete the final report after the close of the session.

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TRADE AND DEVELOPMENT BOARD
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Item 3 (ii) of the provisional agenda

WORK PROGRAMME, INCLUDING TECHNICAL ASSISTANCE, ADVISORY AND TRAINING PROGRAMMES ON COMPETITION LAW AND POLICY

Review of technical assistance, advisory and training programmes on competition law and policy

Note by the UNCTAD secretariat

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GE.98-50807 (E)

I. INTRODUCTION

1. The Third United Nations Conference to Review All Aspects of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices, in paragraph 4 of its resolution adopted on 21 November 1995, 1/ requested the UNCTAD secretariat, "taking into account increased needs for technical cooperation and technical assistance in developing countries, countries in transition and other countries, to carry out a review of technical cooperation activities undertaken by UNCTAD and other international organizations, as well as States bilaterally, with a view to strengthening its ability to provide technical assistance for capacity-building in the area of competition law and policy by:

(a) Encouraging providers and recipients of technical cooperation to take into account the results of the substantive work done by UNCTAD in the above-mentioned areas in determining the focus of their cooperation activities;

(b) Encouraging developing countries and countries in transition to identify specific competition law and policy areas and issues which they would wish to see receive priority attention in the implementation of technical cooperation activities;

(c) Identifying common problems encountered in the competition law and policy area which might receive attention in regional and subregional seminars;

(d) Enhancing cost-effectiveness, complementarity and collaboration among providers and recipients of technical cooperation, both in terms of the geographical focus of technical cooperation activities, taking into account the special needs of African countries, and the nature of cooperation undertaken;

(e) Preparation and execution of national, regional and subregional projects on technical cooperation and training in the field of competition law and policy, taking special account of those countries, or subregions which have not received such assistance so far, especially in the field of law drafting and staff training, and enforcement capacity;

(f) Mobilizing resources and widening the search for potential donors for UNCTAD technical cooperation in this area;".

2. Subsequently, in its agreed recommendations, the Expert Meeting on Competition Law and Policy (November 1997) "invited States members on a voluntary basis to assist UNCTAD in its technical cooperation activities by providing experts, training facilities, and financial resources, and requested the UNCTAD secretariat to pursue its technical cooperation activities within available resources in the light of the resolutions adopted by the Third Review Conference and UNCTAD IX, as well as the deliberations and consultations held during this Meeting". It further requested the UNCTAD secretariat to prepare for consideration by the forthcoming meeting of the Intergovernmental Group of Experts on Competition Law and Policy "an updated

review of technical assistance, taking into account the information to be submitted by States and international organizations no later than 31 January 1998". 2/

3. Accordingly, this note contains information on technical cooperation activities of the UNCTAD secretariat in the period since the Expert Meeting on Competition Law and Policy, held from 24 to 26 November 1997, and extracts from replies of member States to the note by the Secretary-General of UNCTAD requesting information on technical cooperation activities in the field of competition law and policy undertaken by member States and international organizations (TDO 915 (1) of 18 December 1997). The Secretary-General is grateful for the replies to his note.

II. INFORMATION ON UNCTAD TECHNICAL COOPERATION ACTIVITIES

4. UNCTAD provides technical assistance and advisory and training programmes on competition law and policy to developing countries and countries in transition in response to requests received and within resources available. The main types of requests for technical assistance received by UNCTAD are as follows:

(a) States without any competition legislation may request information about restrictive business practices, their existence and possible adverse effects on their economy. This may involve a study of the restrictive business practices (RBPs) in their economy;

(b) States without competition legislation may request introductory seminars directed at an audience including government officials and academics, as well as business and consumer-oriented circles;

(c) States which are in the process of drafting competition legislation may request information on such legislation in other countries, and seek advice about drafting their competition legislation;

(d) States which have just adopted competition legislation may seek advisory services for setting up the competition authority; this usually includes training of officials responsible for the actual control of RBPs, and may involve training workshops and/or on-the-job training with competition authorities in countries that have experience in the field of competition;

(e) States which have already adopted competition legislation and have experience in the control of RBPs may wish to consult one another on specific cases and exchange information; seminars may be organized for such exchanges between competition authorities;

(f) States which wish to revise their competition legislation might seek expert advice from competition authorities in other States, so as to amend their laws in the most effective manner possible.

5. The main technical cooperation activities of the UNCTAD secretariat during the period since the previous Expert Meeting (held in November 1997) are set out below.

National activities

6. UNCTAD participated in the activities of the task force responsible for reviewing the Competition Bill of Malawi. An expert was engaged to direct and finalize, in cooperation with UNCTAD, the work of the drafting team, and a symposium was organized with the participation of the representatives of the local business community and consumer groups with a view to seeking their comments and suggestions on the bill. The bill will be submitted to the National Assembly for approval and adoption. Work has started on defining an institutional framework for creating an independent Competition and Fair Trading Commission and arranging for study tours for officials in charge of setting up the Commission.

7. In accordance with the request by the Government of Mauritius, which asked the UNCTAD secretariat to cooperate with the Ministry of Economic Planning and Development for the elaboration and adoption of competition and consumer protection legislation and in the setting up of the appropriate institutional framework, two experts were selected and engaged to prepare a report, establish the terms of reference and draft a competition law. The report and the draft law were prepared and, after revision in the light of comments provided by UNCTAD, were submitted to the Government for consideration. Furthermore, the Government is considering with the UNCTAD secretariat follow-up activities in competition and consumer protection areas.

8. After the adoption of the Zambian Fair Trade and Competition Act and the establishment of the national Competition Commission, a competition expert was engaged to assist in establishing the structure and operational procedures of the Commission. An advisory mission was undertaken by UNCTAD with a view to helping to identify training needs of newly recruited commissioners and coordinating activities for the elaboration of a common competition policy for the member States of the Common Market for Eastern and Southern Africa (COMESA).

9. At the request of the Government of Ethiopia and taking advantage of UNCTAD participation in a meeting held in Addis Ababa in March 1998, an advisory mission was undertaken by UNCTAD with a view to identifying the country's needs for assistance in the area of competition. An agreement was reached to organize a national competition symposium later in 1998 to introduce the main competition issues and identify areas for future activities.

10. In the process of elaborating the national competition legislation, the Government of Madagascar has requested UNCTAD to review a competition bill and to submit a detailed commentary on it. A project document envisaging technical support in establishing a competition authority and providing appropriate training has been elaborated by UNCTAD and approved for funding by the Government of France.

11. In line with the request by the Government of Tunisia, two competition experts were engaged by UNCTAD and have prepared reports containing an assessment of the Tunisian experience in implementing competition policy, as well as recommendations for possible changes and reforms of methods of investigating suspicious cases and for enforcing pro-competitive regulations.

12. UNCTAD has provided comments on the draft competition legislation of Egypt and has elaborated a project document on "Technical Assistance on Competition Policy", which was approved by the Government and has been submitted to several potential donors. A national Competition Seminar, held in Cairo on 18 and 19 April 1998, acquainted a wide range of participants, including representatives of the local business community, with specific features of Egyptian competition legislation and enabled the Government to take note of specific advice from international experts.

13. A one-week seminar on competition policy, law enforcement, analysis and techniques was held in January 1998 in Nairobi by the Monopolies and Prices Commission of Kenya, the Kenya Institute of Administration and UNCTAD. Its objective was to enhance the expertise of participating officials from Kenya, Malawi, Zambia and Zimbabwe to identify and properly analyse the anti-competitive effects of practices investigated for a possible violation of competition legislation.

14. A brainstorming workshop organized by the German Foundation for International Development (DSE) in cooperation with UNCTAD took place in Malaysia in March 1998. It was designed to help the Malaysian Ministry of Domestic Trade and Consumer Affairs to secure the Parliament's approval of the draft competition law. The draft law was prepared by the Ministry in cooperation with UNCTAD and experts from the Governments of Australia and the Republic of Korea.

15. In respect of forthcoming national seminars, it should be mentioned that, at the time of writing, four seminars organized by UNCTAD in cooperation with national authorities were scheduled to be held in Georgia (May 1998), the Islamic Republic of Iran (May 1998), Bahrain (October 1998) and Morocco (after an UNCTAD needs assessment and advisory mission). In addition, requests for organization of national seminars have been received from Azerbaijan, Botswana, Chad, Ecuador, Lebanon, Mauritania, Saudi Arabia and South Africa.

Regional and subregional activities

16. In line with the decisions taken by the Midrand session of UNCTAD, which in paragraph 91 (iii) of "A Partnership for Growth and Development" called upon UNCTAD to assist countries in formulating competition policies and legislation and in institution-building, focusing on Africa by holding a regional meeting, creating relevant inventories and databases, and establishing a technical cooperation programme, UNCTAD in cooperation with the Egyptian authorities held an African Regional Seminar on Competition Law and Policy in Cairo from 21 to 23 April 1998 for a wide audience of participants from African countries. The objective of the seminar was to strengthen African countries' knowledge of the main issues related to the adoption and efficient application of competition law and policy. The seminar focused on an exchange of experiences with respect to the application of competition law and policy in industrialized countries as well as in developing countries with competition legislation.

17. Within the framework of the African project two subregional workshops are planned to be organized in cooperation with the Central African Customs

and Economic Union (UDEAC) - one on competition law and policy in UDEAC countries, followed back to back by one on consumer protection, to be held in Libreville (Gabon) in June 1998.

18. A joint seminar of the Common Market for Eastern and Southern Africa (COMESA), the Southern African Development Community (SADC) and UNCTAD is planned to be organized in October 1998 to deal with issues of investment and competition as the follow-up to the work of the WTO Working Group on the Interaction between Trade and Competition Policy, as well as to assist COMESA in establishing a common competition policy for its member countries.

19. An ad hoc Expert Group Meeting on Appropriate Follow-up Mechanisms to the First WTO Ministerial Conference and Modalities to Facilitate Africa's Effective Participation in the Second WTO Ministerial Conference was jointly held by UNCTAD, the United Nations Economic Commission for Africa, the International Monetary Fund, the World Bank and the WTO in Addis Ababa from 9 to 12 March 1998 with the aim of assisting African countries in finding areas of common interest and formulating views in the context of WTO activities.

20. In Asia, a Regional Seminar on Competition Policy and Consumer Protection in the Context of Liberalization was jointly held by UNCTAD, PRO-PUBLIC (a Nepalese consumers' non-governmental organization) and the Nepalese Government in Kathmandu on 29 and 30 September 1997 with the aim of highlighting the importance of competition policy for Nepal and conducting an exchange of views on the benefits of competition policy for countries of the region and, in particular, the benefits for consumers. Participants from Bangladesh, India, Pakistan and Sri Lanka attended the seminar.

21. With regard to activities in Latin America, at the request of the FTAA (ALCA) Working Group on Competition Law and Policy, a technical cooperation project on competition law and policy for countries of the Free Trade Area of the Americas (FTAA) was prepared by UNCTAD, and revised and adopted by the Working Group in September 1997. National competition workshops are planned to be held in Ecuador and Paraguay.

Participation in seminars and conferences

22. During the period under review, staff members of UNCTAD took part in a number of seminars, workshops and conferences related to issues of competition law and policy and consumer protection. In particular, resource persons from UNCTAD made substantive presentations and/or participated in discussions at the following meetings:

- The Second International Training Seminar on Competition Policy (Seoul, 4-8 August 1997), organized by the Korean Fair Trade Commission and the Korean Development Institute with the main objective of broadening participants' expertise in different topics related to the proper enforcement of competition policy;

- The Eighth International Conference on Competition, held on 27 and 28 October 1997 in Berlin and devoted to the issue of "competitive entry to network infrastructure industries";

- The Fifteenth World Congress of Consumer International, held in Santiago (Chile) from 3 to 7 November 1997;

- The APEC/Partners for Progress (PFP) Course on Competition Policy, which was held in Bangkok from 9 to 14 February 1998 as the second series in Asia-Pacific Economic Cooperation (APEC) meetings on competition organized by the Government of Thailand and financed by the Japanese Government;

- The consultative forum on "Competition and Trade Policy in the Global Arena: An International Business Perspective", held by the International Chamber of Commerce in Paris on 20 and 21 February 1998;

- The seminar on "Competition Law and Policy", held by the Tunisian Competition Authority on 1 and 2 April 1998 in Tunis.

III. TECHNICAL COOPERATION OF MEMBER STATES AND INTERNATIONAL ORGANIZATIONS

(a) Technical assistance provided, planned or received

23. This subsection provides a summary of the replies received to the Secretary-General's note TDO 915 (1) of 18 December 1997, requesting information on technical cooperation activities in the area of competition law and policy.

24. According to information in an article by H. Spier and T. Grimwade from the Australian Competition and Consumer Commission (ACCC), this agency has been involved in numerous technical assistance programmes, organizing workshops and seminars on relevant competition issues, or hosting visiting competition policy officials and educating them on aspects of Australia's competition policy and law enforcement regime, with particular emphasis on the usefulness of the Trade Practices Act 1974 as a model piece of legislation. In this connection, Malaysia has drafted a Competition Bill using the Australian Act as a legislative model, and Viet Nam is considering doing the same. In 1996 the ACCC hosted, with AusAID support, an eight-week training programme for officials from competition and consumer protection authorities in China, Indonesia, Malaysia, Thailand and Viet Nam. In 1997, a competition policy training programme was conducted in conjunction with the National Economic and Development Authority and the Tariff Commission of the Philippines, involving seminars and workshops for government officials, academics and members of the private sector in the Philippines. Over the next few years, the ACCC expects to provide much more technical assistance in competition matters, with the focus on APEC countries and other Asian countries such as India, as well as on South Africa. Maintaining informal links with competition law enforcement agencies is a very important way of keeping informed of developments in competition policy and law in other jurisdictions, as is exchanging views. The ACCC regularly hosts visits by competition policy officials from all over the world, and most particularly from the Asia-Pacific region.

25. APEC has provided a forum for cooperative approaches to competition policy and law enforcement. For instance, an APEC Workshop was held in Canada

in May 1997 for competition policy and law enforcement officials on matters relating to competition policy and deregulation. The ACCC has strongly supported a proposal by the Fair Trade Commission of Taiwan Province of China for the establishment of a competition database for all APEC countries and a Competition Policy Information and Research Centre.

26. The Belgian competition authorities have taken part in two courses on the provision of technical assistance in competition matters to the countries of Central and Eastern Europe, organized jointly with European Commission Directorate-General IV: a one-week course for four competition authority officials from Estonia, Hungary, Poland and Romania, held in 1995; and another one-week course for two Bulgarian officials, held in 1996. These officials received information on the following: Belgium's Act of 5 August 1991, on safeguarding economic competition; the organization and operation of the Belgian competition authorities; cooperation between the Belgian competition authorities and European Commission Directorate-General IV; the monitoring of concentration in the Belgian market with specific case studies; and public-sector enterprises and competition law. In 1997, the Belgian authorities agreed to participate in a third course organized by European Commission Directorate-General IV and member States.

27. In 1997, France's Office of Competition, Consumption and Fraud (DGCCRF) carried out activities in Algeria, Brazil, Burkina Faso, China (Hong Kong), Côte d'Ivoire, Cyprus, Gabon, Malaysia, Morocco, Poland, Romania, the Russian Federation, Tunisia and Ukraine. The majority of these activities were financed bilaterally, either (as with the mission to Poland, by the Association pour le développement des techniques économiques et financières (ADETEF), or by the Ministry for Foreign Affairs, except in the cases of Romania (Poland-Hungary Action for Restructuring of the Economy - PHARE programme) and Ukraine (Technical Assistance to the Commonwealth of Independent States - TACIS programme). Some of the programmes are long established, such as those concerning Morocco (1993), Tunisia (1994) and Poland (1994). The activities of the DGCCRF basically fall into the following categories: (a) missions to other countries that may involve situation and needs analyses, seminars, group training, case studies or assistance in drafting laws or regulations; (b) hosting visits from delegations to the DGCCRF, which usually involves meetings with central administration executives, a theoretical course in the training centre and a practical course on decentralized services. During the programmes, contact is regularly maintained with foreign partners and documentation is sent out on requested subjects.

28. In 1997, the Competition Authority of Germany - the Federal Cartel Office (FCO) - continued to provide technical assistance in the field of competition law and policy to developing countries and countries in transition. Technical cooperation consisted, in particular, of advisory and training programmes organized by the FCO for officials from foreign competition authorities. From February 1997 to May 1998, this type of assistance involved 108 participants from Albania, Bulgaria, China, the Czech Republic, El Salvador, Hungary, Lithuania, Mongolia, Peru, Poland, the Republic of Korea, the Russian Federation, Thailand, Ukraine, Uzbekistan and Zambia. Experts from the FCO participated in international training and technical assistance seminars and went on missions to foreign competition

authorities in order to provide assistance in the handling of individual cases. From February 1997 to March 1998, FCO experts were involved in 10 such missions/seminars, which took place in Albania, Brazil, Bulgaria, Germany, Kenya, Malaysia, Romania, Sri Lanka and Turkey (Eighth International Conference on Competition, held in Berlin). In addition, written technical assistance was provided by the FCO on a continuous basis. In the FCO's view, technical cooperation between competition authorities has benefits for all those involved. At the policy level, international cooperation may foster the concept of competition policy as a *sine qua non* for the functioning of a market economy and may thus promote the establishment of adequate competition legislation worldwide as well as the effective implementation of competition laws by the competent authorities. At the implementation level, the benefits of mutual technical support in the handling of individual cases are obvious; furthermore, the increasing number of cases with cross-border effects in a globalizing economy requires cooperation between the authorities concerned. Personal contacts with officials from foreign authorities established during technical assistance activities are usually very helpful with regard to future cooperation.

29. At the multilateral level, the Italian competition authority has taken part in 10 training and technical assistance seminars, organized by the OECD in September 1992 (Vienna), July 1993 (Vienna), June-July 1994 (Budapest), February 1994 (Paris), May 1995 (Budapest), December 1995 (St. Petersburg), October 1996 (OECD and the World Bank in Buenos Aires), October 1997 (Bucharest), November 1997 (Istanbul) and December 1997 (Moscow). At the bilateral level, the authority took part in the first three technical assistance programmes organized by the European Commission. In particular, it hosted visits by officials from countries in transition in Eastern Europe and the Baltic countries in 1995, 1996 and 1997. During the period 1996-1997, the Italian authority met with the presidents or vice-presidents of the competition authorities of the Czech Republic, Taiwan Province of China and Ukraine, and also with the Vice-President of the State Commission for Commerce and the Economy of the People's Republic of China. In February 1997, the Italian authority took part in seminars on competition policy in countries in transition, held in Moscow and organized by the State Committee on Competition of the Russian Federation. The technical assistance requested by States reveals a particular interest in substantive aspects of protecting competition and in the effective application of legislation in specific cases. A lively interest has also been shown in privatization and the regulation of public services.

30. Since 1996, International Training Programmes for Competition Policies have been held annually in the Republic of Korea. The first programme was held in Seoul on 12 and 13 September 1996 with 24 participants from China, Hong Kong, Indonesia, Malaysia, Pakistan, the Philippines, the Russian Federation, Singapore, Sri Lanka, Taiwan Province of China, Thailand and Viet Nam. The second programme was held in Seoul from 4 to 8 August 1996 with 23 participants from Chile, China, Hong Kong, Indonesia, Malaysia, Mexico, the Philippines, the Russian Federation, Singapore, Taiwan Province of China and Thailand. Since 1996, international symposia on competition policies have been held annually. The first symposium, on "Competition Policies and World Economic Integration", was held in Seoul on 9 September 1996 by the Korea Institute for International Economic Policy and

was sponsored by the Korean Fair Trade Commission. The second symposium, on "The Trend in Standardization of Cartels and Countermeasures Against It", was held jointly by the Korean Fair Trade Commission and the Korean Institute for Industrial Economy and Trade in Seoul on 3 September 1997. A technical assistance programme (an international training programme) for competition policies and an international symposium on competition policies are scheduled to be held in Seoul in August 1998.

31. The Competition Office of the Republic of Lithuania (COL), since its establishment in November 1992, has cooperated with and received technical assistance from different international organizations. The United States Agency for International Development (USAID), within the framework of the economic aid programme for Lithuania, arranged short-term and long-term visits by United States competition experts to the COL, with the main goals of developing the fundamentals of competition law and providing COL's employees with comprehensive assistance while carrying out specific investigations. Within the framework of this programme, experts from the United States Department of Justice and the Federal Trade Commission worked for six months in the COL in 1994-1995 and COL employees had an opportunity to visit those two institutions. Every year since 1993, the Organisation for Economic Co-operation and Development (OECD) has organized the seminars on the enforcement of competition law for the economies in transition. Representatives of the COL were invited to take part in these seminars. In 1993-1994 an expert from the Danish economics ministry worked as a consultant in the COL on the basis of bilateral assistance. Since 1995 there has been close cooperation between the COL and Directorate-General IV-Competition of the European Commission. Several COL employees had an opportunity to take part in the traineeship programmes on competition issues organized by DG IV, as well as to visit competition institutions in member States.

32. Morocco has drafted legislation on competition and intends to introduce a competition policy. The legislation was prepared by Moroccan experts with international assistance, provided chiefly by the French Office of Competition, Consumption and Fraud (DGCCRF) and by the United States Agency for International Development (USAID) through the specialist Centre for Institutional Reform and the Informal Sector (IRIS) of the University of Maryland. The assistance provided by USAID through the IRIS Centre focused mainly on the experience of countries in transition and on critical analysis of the competition bill. The assistance provided by the DGCCRF was part of its triennial cooperation programme from 1994-1996, extended through 1997 and 1998. It focused on a study of the principles and rules of competition based on French experience, collaboration in drafting the competition bill, and management training.

33. The Comisión Federal de Competencia (CFC) of Mexico has undertaken various technical cooperation activities with newly created competition authorities, particularly those of Latin American countries, interested in learning about the Mexican experience. In particular, in 1996-1998 training was organized by the CFC for personnel of the competition authority of Costa Rica and the CFC participated in the seminar on competition held in San José in September 1997. During the visit by the President of the Commission of Free Competition of Panama to the CFC in 1997, an agreement was reached on the organization of training activities in the CFC in 1998.

In 1997, CFC employees received training at a workshop on "Antimonopoly Act and Competition Policy" held in Japan in October; APEC workshops on competition policy, in particular the workshop organized in August in Seoul by the Korean Fair Trade Commission; a training course in Santa Cruz de la Sierra (Bolivia) organized by the Tribunal de Defensa de la Competencia of Spain, the Spanish International Cooperation Agency and Sistema Económico Latinoamericano (SELA) in May (it was agreed that in 1998 two CFC employees would receive two weeks' training with the Spanish competition authority); an international seminar on competition law organized by the Consejo Administrativo de Defensa Económica de Brasil (CADE) with the World Bank and the OECD in July in Rio de Janeiro; a competition seminar organized by the Institute for Latin American and Caribbean Integration in Buenos Aires in September, as well as a competition seminar organized by the EU and the Rio Group in Montevideo; the Eighth International Conference on Competition organized in October in Berlin by the German competition authority; and the joint WTO/UNCTAD/World Bank symposium on competition policy held in Geneva in November.

34. Niger received technical cooperation assistance from France's Office of Competition, Consumption and Fraud (DGCCRF) in training two managers for Niger's Office of Competition.

35. In Pakistan the Monopoly Control Authority organized a seminar in Islamabad in December 1995 on the "Enforcement of National Laws on Competition and Restrictive Business Practices". This seminar was a joint effort of the Monopoly Control Authority, UNCTAD, the German Federal Cartel Office (FCO) and the German Foundation for International Economic Development (DSE). Its purpose was to increase awareness of competition laws in general and their applicability in Pakistan's context in particular. The Monopoly Control Authority has requested the DSE to provide assistance for holding a regional seminar on competition policy/unfair trade practices. The DSE has agreed to organize the seminar at the beginning of 1999.

36. Poland provides technical assistance on the basis of bilateral cooperation agreements between the Polish Office for Competition and Consumer Protection (OCCP) and antimonopoly offices in Lithuania, the Russian Federation and Ukraine. Agreements between these offices provide for exchange of experts and supply of information. On the basis of a bilateral agreement between France and Poland, the OCCP receives support from the DGCCRF, which is financed by funds of the France-Pologne Foundation. The technical assistance provided by the DGCCRF has been in the form of seminars in Warsaw led by French experts and study visits by OCCP employees to France. Initially, French technical assistance concerned consumer protection issues, but it now also concerns competition law and policy. Technical assistance received in 1991-1995 from the EU made it possible to acquire knowledge about EU competition law and to introduce Community law issues to business entities acting in the Polish market. EU technical assistance was provided for the harmonization of Polish competition law with European Community regulations. PHARE funds made it possible for Polish experts to participate in conferences and seminars on competition law and policy organized in EU member States and in other countries.

37. In Portugal, the Directorate-General for Trade and Competition (DGCC) has contributed sine 1995 to the technical assistance programmes set up by the European Commission in the form of study visits for officials from the Central and Eastern European (CEEC) countries. In 1995-1997, the DGCC received officials from Bulgaria, Estonia, Hungary, Slovakia and Slovenia. In addition, it has been involved in bilateral activities with Portuguese-speaking African countries (PALOPS), having participated in Guinea-Bissau in 1997 in a two-week training course on the protection and promotion of competition and in a seminar organized by the Government of Angola on price liberalization and protection of competition (January 1998).

38. The State Antimonopoly Committee of the Russian Federation (SAC) is a beneficiary of a number of projects.

39. A World Bank training project started in January 1997 and was carried out in the form of three-week seminars involving the training of trainees as well as of trainers, held in Moscow, Kostroma, Ekaterinburg, Novosibirsk, Rostov-on-Don and St. Petersburg. In addition, the World Bank has provided the central and regional offices of the SAC with office equipment.

40. An OECD annual project has provided the SAC with training seminars held in Vienna, Istanbul, St. Petersburg and Moscow. The project has also involved consultations on different competition policy issues.

41. European Union projects: (i) the 24-week project on "Technical Assistance to the Russian Federation Antimonopoly Committee" began in January 1997, providing for a workshop for trainers, workshops for SAC staff, a workshop for judges, language courses, traineeships in the European Union, comments on draft legislation/regulations, surveys of antimonopoly practices and other activities; (ii) the 12-week project (February-April 1998) on introduction to state aid in the steel sector was directed to training in state aid regulations in the steel sector; (iii) the project for the implementation of the Steel Agreement between the European Coal and Steel Community and the Russian Government is planned to be launched in 1998 and to be carried out over 24 months; (iv) the project on support for the development of consumer protection in the Russian Federation is planned to be carried out in 1998 for the benefit of the SAC and the KonfOP (Interrepublican Confederation of Consumer Societies).

42. United States Government projects: (i) short-term missions are provided by the United States Department of Justices Antitrust Division and the Federal Trade Commission and offer one-week training seminars in seven regional offices of the SAC; (ii) on a long-term mission two experts from the Department of Justice and the Federal Trade Commission have been assisting the staff of the SAC's Perm regional office.

43. Germany: The Plan of Technical Assistance provided by the Federal Cartel Office (FCO), the Ministry of Economy and the Ministry of Finance comprised the following activities: a workshop on "State Control of Economic Concentration" and round-table discussions; a training programme in the FCO for SAC experts and round-table discussions on "Antimonopoly Control over the Process of Economic Concentration"; and an exchange of experience on different problems of competition policy.

44. Japan: The Fair Trade Commission of Japan organized in 1995-1996 two workshops for SAC experts on "Globalization of the Economy and Regulation of Competition".

45. Republic of Korea: Technical assistance to the SAC from the Government of the Republic of Korea focused mainly on the provision of training workshops. In 1996-1997 the Korean Development Institute in collaboration with the Korean Fair Trade Commission organized a number of workshops on various topics.

46. The Swedish Competition Authority, since its establishment in 1992, has been involved in a wide range of technical assistance activities. Emphasis has been placed on Central and Eastern Europe, especially on countries applying for membership of the EU. In 1997, personnel of the Authority were involved in 13 technical cooperation activities, concerning the Baltic States (seminar in Estonia), the CEEC countries (seminars in Slovenia and Belgium), Estonia, Hungary, Latvia, Lithuania, the Russian Federation, Slovakia, Taiwan Province of China and Zambia.

47. Activities envisaged for 1998 include mainly assistance to competition authorities in countries applying for EU membership. Requests for technical assistance have been received from a number of other countries as well, but the planning of these activities is at a preparatory stage. In some countries, particularly those in transition to a market economy, there seems to be a need for assistance in the implementation of competition policy by both competition authorities and the administration as a whole. In countries with more experience of competition policy, there seems to be a demand for practical training by competition authorities regarding competition law enforcement. Specific competition problems related to deregulation in infrastructure sectors are another priority area. There is also a need for assistance in the area of market access and the relationship between competition policy and trade policy, probably emerging as a result of the ongoing work in the WTO. More resources for technical cooperation could be made available through increased efficiency of the assistance provided, which could be achieved by means of careful planning and exchange of information between various parties, e.g. national authorities and international organizations, responsible for similar or related technical assistance projects. The initiative of the UNCTAD secretariat in this regard is very welcome.

48. The Government of Thailand provided detailed information on a training course in the area of competition policy planned to be conducted by the Government of Thailand with the support of the Government of Japan once a year from 1996 to 2000, subject to annual consultations between both Governments and on the basis of approval by relevant APEC committees. The purpose of the course is to develop human resources capable of establishing and effectively managing competition law and policy in order to create an environment enabling fair and free competition and to contribute to the liberalization and facilitation of trade and investment. Applicants for the course are nominated by Governments of APEC member countries. The Government of Thailand also provided information on the International Competition Policy Training Programme of the Korean Fair Trade Commission.

49. The Antimonopoly Committee of Ukraine has received technical assistance within the framework of TACIS, USAID and Know-How programmes for creation and improvement of the legal and methodological base of its activities, but needs further assistance in this sphere. It has concluded bilateral agreements on cooperation with the competition authorities of Belarus, Bulgaria, the Czech Republic, Hungary, Lithuania, and Poland. These agreements provide for sharing experience in competition policy development and harmonization of national competition laws.

50. In the United Kingdom, the Office of Fair Trading (OFT) has been involved in technical assistance work for a number of years. It acts in response to requests made directly by other competition authorities, or more often through training consultants or assistance programmes such as the European Commission's PHARE and TACIS schemes, and the United Kingdom's Know-How Fund. The assistance takes many forms, the most common being short (one- or two-day) visits to the OFT by overseas officials. Attachments of one or two weeks have also been arranged when resources permit. Among those who have visited the OFT are officials from China, the Czech Republic, Hungary, Jamaica, Lithuania, Poland and Ukraine. The OFT participates in the annual OECD seminars held in Vienna for CEEC authorities. OFT staff worked with the State Antimonopoly Committee in the Russian Federation under the auspices of a year-long technical assistance project financed by the Know-How Fund, which began in November 1994. The project involved a team of OFT experts working firstly with the Committee in Moscow and then in regional offices.

51. During the 18-month period from July 1996 through December 1997, the United States federal antitrust agencies (the Department of Justice and the Federal Trade Commission): (i) provided long-term advisers to Romania, the Russian Federation and Ukraine; (ii) sent one or more short-term technical cooperation missions to Albania, Argentina, Brazil, the Czech Republic, Kazakhstan, Kyrgyzstan, Latvia, Lithuania, Moldova, Romania, the Russian Federation, Slovakia, Slovenia, Ukraine and Venezuela; (iii) hosted as interns competition officials from Brazil, Costa Rica, Slovakia and Slovenia; and (iv) participated in OECD competition seminars in Buenos Aires, Istanbul, Kiev, Moscow, Rio de Janeiro and Vienna. Most of the expenses of these technical cooperation activities were funded by USAID.

52. The "Pro-Competencia" Superintendency of Venezuela is working in close cooperation with UNCTAD and has benefited from its assistance in various competition-related areas. Also, the European Union has started discussions to establish a cooperation agreement at the level of the Andean region. The "Pro-Competencia" participated in OECD/World Bank seminars in Bogota (1994), Paris (1994), Buenos Aires (1996) and Rio de Janeiro (1997). Another type of multilateral assistance is provided in the form of training seminars and workshops, organized within the framework of the agreement between the Spanish International Cooperation Agency and SELA. Various bilateral technical cooperation and training programmes have been implemented in cooperation with the competition authorities of Canada, Germany, Spain and the United States.

53. The World Trade Organization carries out technical assistance activities in the area of competition policy, focusing on activities that will assist WTO members to participate fully in the work of the WTO Working Group on the Interaction between Trade and Competition Policy. Efforts are made to

coordinate such activities with other intergovernmental organizations active in this area. In 1997, the principal such activity was a one-day symposium, sponsored jointly by the secretariats of the WTO, UNCTAD and the World Bank, on competition policy, economic development and international trade, which took place in Geneva on 29 November. This event, attended by more than 200 delegates, featured presentations by senior officials of competition agencies from Africa, Asia, Latin America and Central/Eastern Europe, in addition to selected academics and experts from the three sponsoring organizations. A module on trade and competition policy was presented at three sessions of the WTO Trade Policy Course, a comprehensive course on trade policy issues that is held periodically for officials of developing and transition countries. In March 1998, a member of the WTO secretariat participated in a seminar on new issues in trade policy sponsored by the United Nations Economic Commission for Africa, in Addis Ababa (Ethiopia), which included consideration of the relationship between trade and competition policy. In April, another staff member participated in the Regional African Seminar on Competition Law and Policy, sponsored by UNCTAD, in Cairo.

(b) Requests for technical assistance

54. This subsection contains extracts from the replies received, which are related to requests for technical assistance with identification of specific competition law and policy issues which the States would wish to see receive priority attention.

55. Botswana: Assistance is needed in laying the groundwork for drafting a competition law in line with the country's requirements and to provide the necessary training in its enforcement, more particularly in developing the requisite analytical skills to conduct investigations into restrictive business practices. There appear to be signs of anti-competitive behaviour on the part of some enterprises, which if left uncontrolled could have a negative impact on the orderly functioning of the market.

56. Dominica: The country does not have an enacted competition policy or competition legislation. Having these in place, in the short to medium term, will be a priority for Dominica. Work is currently being done at the Caribbean Community (CARICOM) level on competition policy, and Dominica would seek to develop its policy within that framework.

57. Gabon: In order to introduce competition policies and strengthen legislation, training and awareness need to be enhanced among all economic partners in Gabon. Training and awareness activities will accordingly target the directors and officials of administrations with economic responsibilities, company directors and managers, heads of employers' organizations, and consumer association managers. Legal training will focus on regulatory bodies dealing with the settlement of competition disputes and specialists in competition law.

58. Bilateral and multilateral cooperation could be one way of helping Gabon to finance its training efforts. Training other than seminars usually takes place abroad. The fact that non-institutional actors are participating in the technical organization of competition should encourage donors to take a more pragmatic approach to the problems of financing. Technical assistance could

help in a number of ways, by extending Gabon's range of partners, defining a clearer regulatory framework, bringing the practices of regional and subregional States more into line with the spirit of competition by providing a stable framework, and establishing a training and information policy aimed at all economic actors.

59. Kenya: Technical assistance requests relate to: (a) organizing a second course on competition policy and law in 1999 for Kenya and the African region; (b) providing technical assistance for the review of Kenyan competition law; (c) providing technical support for the publicizing of competition policy and law; and (d) providing financial support for short-term attachments, for two weeks or so, for Kenyan competition officials to experienced competition bodies.

60. Lebanon: The Government has requested "technical, consultative and training assistance related to the regulations and policies of competition", which could be offered by UNCTAD.

61. Lithuania: In 1997 the Danish Government suggested technical assistance to the Lithuanian Competition Office, envisaging that employees of the Office could apply to the relevant Danish authority for assistance. The Office has prepared a project for PHARE technical assistance for 1998, indicating such priorities as strengthening the office, training of employees and assistance in drafting secondary legislation on competition related to the ongoing approximation process due to the forthcoming integration of Lithuania into the EU. It is important that the business community be aware of competition principles. One priority area is the presenting of the new Lithuanian Law on Competition to the business community, i.e. publishing of the Law on Competition, secondary legislation on competition, etc. It is also necessary to present competition regulations of the EU and other international organizations to the Lithuanian business community. Therefore, it is important to publish the relevant documents in Lithuanian. Representatives of Lithuania dealing with competition issues are often invited to take part in international conferences, seminars and symposia on competition. Participation in such events, however, very much depends on the financing of Lithuanian representatives by international donors, and therefore requires appropriate financial assistance.

62. Morocco: The priority in terms of cooperation and assistance needs is to establish the right conditions for implementing the country's competition policy, with emphasis on the following areas: basic and further training for officials in the Office of Prices and Competition and in the agencies responsible for monitoring and enforcing competition law, in methods of investigation into anti-competitive practices; preparing studies on competitiveness in economic sectors and on the behaviour of economic agents in relation to price deregulation; active participation in seminars and international events relating to competition; running a campaign to promote a competition "culture"; and providing information on restrictive business practices, the forms they may take and their potential negative impact on the economy.

63. Mexico: Priority areas identified by the CFC include: (a) mechanisms to develop a culture of competition; (b) establishing due process in conditions of transparency and efficiency; (c) autonomy of competition authorities; (d) intellectual property rights and competition policy;

(e) conditionality for concentration; (f) analysis of collusive tendering and detection of such practices; (g) identification of differences between collusion and parallel behaviour; (h) specific features of the banking system and telecommunications; (i) competition and privatization of essential facilities, such as ports, gas, water and electricity; (j) investigation procedure to detect restrictive business practices; and (k) relations between competition authorities and regulatory agencies.

64. Niger: The priority in terms of competition law and policy is to obtain technical assistance for the purpose of establishing an institutional and technical framework, and later training officials to supervise machinery for the protection of competition.

65. Pakistan: The Competition Law of 1970 is being amended. Since unfair trade practices and single-firm monopolies have not been dealt with in the past, no expertise has been developed and assistance is therefore required in these fields. The Monopoly Control Authority (MCA) needs assistance in determining the market share/product specification for various undertakings. The area of multilateral trade negotiations and competition policy is relatively new for Pakistan. In order to draw competition-related implications for various sectors there is a need for updated information on these issues. The MCA requests assistance in the following forms: (a) training of MCA personnel in the field of investigation and application of the law in cases of undue concentration of economic power, unreasonable monopoly power, restrictive trade practices, unfair trade practices and new emerging issues in the WTO's work on trade and competition policy; (b) possible funding of an expert to be attached to the MCA to train its staff in the methodology for market investigation; (c) training in the areas of law application procedures used by other competition authorities and analysis of specific cases; (d) seminars to disseminate information on competition policy; (e) funding for comprehensive research studies regarding the impact of competition policy on the corporate sector, how the desired changes can be brought about, and facilitating the exchange of updated information on international trade and competition issues; (f) advice on the nature and recruitment of personnel of the Authority; (g) an analysis of competition cooperation agreements between different countries, and advice as to how Pakistan can benefit from international cooperation agreements; (h) technical assistance in Pakistan in the form of on-the-job training and lectures by resource persons for MCA officials; and (i) strengthening of international cooperation to generate fresh resources.

66. Russian Federation: The State Antimonopoly Committee will appreciate provision of technical assistance in the following areas: organization of training programmes for Russian experts; exchange of materials on competition policy issues; expert analyses of materials; provision of information on the revision of antimonopoly legislation in developed countries; and the holding of international conferences, workshops and round-table discussions.

67. Ukraine: Technical assistance is needed in particular in the form of consulting services; arrangement of seminars and training for officials who deal with the practical implementation of competition policy; and preparation and publication of guidelines and methodological materials. It is important to emphasize the following issues: (a) improvement of competition policy and legislation and their harmonization with trade policy in conditions of international trade liberalization; (b) legislative regulation of provision of

State support to economic entities, so as to prevent distortion of the market environment; (c) elaboration of a Code of competition laws, which should be codified according to the provisions of the Constitution and the new Civil Code of Ukraine; (d) development of competition legislation provisions, which were not adequately elaborated in the previous period, particularly concerning regulations for the process of concentration, control over economic concentrations and observance of competition rules, and elaboration of appropriate laws and amendments consequent upon the entry into force of the Law on Protection against Unfair Competition; (e) drafting of comments on this Law and on the draft Law on Protection of Economic Competition; (f) improvement of the Temporary Rules for Examining Cases of Violations of the Antimonopoly Legislation of Ukraine; and (g) elaboration of guidelines and methodological instructions on practical economic analysis. For the successful provision of technical support it is necessary to: (i) involve experts from EU countries, Canada and Japan in the provision of consulting services to the Antimonopoly Committee of Ukraine, and arrangement of seminars on competition policy and laws; (ii) receive methodological assistance concerning the use of confidential and secret information in the course of investigation of economic concentrations, particularly concentrations with the participation of foreign entrepreneurs; and (iii) to acquire through training and seminars for the Committee's officials, information on the activities of other countries' competition authorities.

68. Venezuela: Training is requested in the following areas: (a) design of preventive or prudential measures that should be adopted during investigations concerning restrictive business practices; (b) methodologies used to calculate sanctions in cases of anti-competitive behavior; (c) analysis of joint production and distribution agreements; (d) analysis of exclusive sales contracts; (d) design of "divestiture" schemes or conditions to be imposed in cases of economic concentration which restrain competition; (e) criteria used in other countries to demonstrate conduct corresponding to abuse of dominant position; (f) analysis of market structure and levels of competition in regulated sectors; (g) analysis of vertically integrated structures; and (h) elements used in investigating anti-competitive practices where proof of intent is required.

69. Viet Nam: Assistance is requested in organizing and financing a seminar or a three-day training course on competition and consumer protection law and policy formulation.

Notes

1/ Annex I to the report of the Third United Nations Conference to Review All Aspects of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices (TD/RBP/CONF.4/15).

2/ Annex I to the report of the Expert Meeting on Competition Law and Policy (TD/B/COM.2/9; TD/B/COM.2/EM/12).

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EXPERIENCES GAINED SO FAR WITH INTERNATIONAL COOPERATION ON COMPETITION POLICY ISSUES AND THE MECHANISMS USED

A. Introduction

1. The Expert Meeting on Competition Law and Policy requested the UNCTAD secretariat to prepare a preliminary report of a study on experiences gained so far with international cooperation on competition policy issues and the mechanisms set up, taking into account information to be received by 31 January 1998 (Agreed Conclusions, paragraph 5 (c), annex I, of the Report of the Expert Meeting on Competition Law and Policy (TD/B/COM.2/9-D/B/COM.2/EM/12)). A request for relevant information was sent out by the UNCTAD secretariat, and replies were received from the Governments of Australia, Belgium, France, Gabon, Germany, Italy, Mexico, Pakistan, Poland, Spain, Sweden, Thailand, the United Kingdom and the United States, as well as from the European Commission. On the basis of these replies and other information available to the secretariat, the outline below has been prepared for consideration by the Expert Group. Delegations may wish to give further guidance to the secretariat on the basis of this outline, to generally indicate their views on this subject, and to provide more information on concrete experiences so far with international cooperation.

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B. Types of cooperation

2. International cooperation in the area of competition law and policy can take place either on an informal basis or in the application of an international instrument. There are basically five types of such instruments: bilateral agreements dealing solely with cooperation on competition law enforcement; bilateral agreements relating to mutual assistance in criminal matters, including criminal antitrust cases; bilateral agreements providing for technical cooperation on competition policy and related areas; regional agreements or bilateral agreements concluded within a regional framework, covering competition policy aspects within larger agreements on free trade or economic integration; and legally binding or non-binding multilateral instruments, including both those which are universally applicable and those which are of a "plurilateral" nature. In practice, the borderlines between these different types of agreements are sometimes blurred. A brief overview of them and some of their provisions is provided below, and a preliminary table (see p.5) has been prepared listing some of them and their provisions. This table would be refined and completed in the final study, thus making it unnecessary to review the provisions of each agreement in detail. The study would provide a list of the different agreements, describe typical provisions in them, highlight certain features, make comparisons as appropriate, and describe experiences with their implementation. After a discussion of cooperation on the basis of such agreements, types of informal cooperation, and experiences in relation thereto, would be described.

C. Bilateral agreements on competition law enforcement

3. There are several cooperation agreements in this area, such as those between the United States and, respectively, Australia, Canada, Germany and the European Commission, between Australia and New Zealand, and between France and Germany. With variations, depending on the individual agreement, they may include provisions relating to notification of enforcement activities; commitments to take into account the other party's significant interest when investigating or applying remedies against restrictive business practices (RBPs) (traditional comity); consultations to resolve conflicts between respective laws, policies and national interests; voluntary procedures for exchange of non-confidential and (subject to adequate safeguards) confidential information; administrative or judicial assistance for investigation or enforcement by another party; and coordinated action in respect of related RBPs occurring in both countries. Distinctions would be made between the older agreements primarily concerned with avoiding conflicts among national authorities arising out of competition law enforcement proceedings, and the newer generation of agreements also aimed at cooperative international action against RBPs. Some recent agreements provide, for instance, for "positive comity", under which one competition authority can ask the other party to control RBPs adversely affecting the first country's important interests which originate in the other country (response to such requests is voluntary).

D. Bilateral agreements for mutual assistance in criminal cases

4. There are agreements of this type only between Canada and the United States and between Germany and the United States, involving very far-reaching cooperation in respect of criminal action against cartels.

E. Bilateral agreements for technical cooperation on competition policy

5. Under a 1992 technical cooperation agreement between the French Direction Générale de la Consommation et de la Répression dés Fraudes (DGCRF) and the Direction Générale de la Consommation (DGCN) of Gabon, for example, the two bodies are to cooperate in such areas as competition policy, consumer protection, unfair competition, product quality and safety, and prices of products. In the implementation of this agreement, the DGCN has sent its personnel for short-term or long-term training at centres run by the DGCRF. More information would be sought about such agreements and their implementation.

F. Regional agreement

6. The most advanced regional system of competition rules is certainly that of the European Union, which in application of the Treaty of Rome and regulations made thereunder, enforces supranational competition rules. There is close cooperation between the European Commission and European Union (EU) national competition authorities, and among national authorities, involving inter alia parallel application of national and EU competition laws and a system for allocation of competence among the different competition authorities. Less far-reaching competition rules apply among countries of the European Free Trade Association (EFTA), but the competition rules of the EU now apply to member countries of the European Economic Area. Rules based on EU competition law have been extended to trade with several Eastern European and Mediterranean countries, as well as with Turkey, under different series of agreements. Relatively less far-reaching Partnership and Cooperation agreements have been concluded between the EU and countries of the Commonwealth of Independent States (CIS). Agreements have also been concluded by EFTA States and by Israel with some Central and Eastern countries, and within this latter group of countries.

7. The North American Free Trade Agreement (NAFTA), which applies to Canada, the United States and Mexico, includes a number of provisions relating to competition law. In particular, Article 1501 provides that:

"(i) Each Party shall adopt or maintain measures to proscribe anti-competitive business conduct and take appropriate action with respect thereto, recognizing that such measures will enhance the fulfilment of objectives of this agreement. To this end the Parties shall consult from time to time about the effectiveness of measures taken by the other party.

(ii) Each Party recognizes the importance of cooperation and coordination among their authorities to further effective competition law enforcement in the free trade area. The Parties shall cooperate on issues of competition law enforcement policy, including mutual legal assistance, notification, consultation and exchange of information relating to the enforcement of competition laws and policies in the free trade area.

(iii) No Party shall have recourse to dispute settlement under the Agreement for any matter regarding this Article."

8. MERCOSUR , the "Common Market of the Southern Cone" of South America, was formed on 26 March 1991 by the Treaty of Asunción and currently consists of Argentina, Brazil, Paraguay and Uruguay, with Chile and Bolivia becoming associate members as of 1 October 1996 and 1 March 1997, respectively. Competition policy is among the many topics foreseen as the subject of coordination at the MERCOSUR level. The latest MERCOSUR Protocol on Competition Policy, which was approved in December 1996, does not become effective until it has been incorporated into each member's legal system in accordance with national legislation, while common norms to control anti-competitive acts and agreements are expected to be completed within two years. The main features of the Protocol are as follows:

(i) All concerted agreements whose purpose or effect is to impede, restrict or distort competition or free access to markets, or that abuse a dominant position in a relevant market of goods and services within MERCOSUR and affect trade between the member States are against the Protocol;

(ii) The MERCOSUR Commerce Commission and the Technical Committee on Competition Policy will enforce through the power of injunctions, consent decrees, fines etc. (imposed by national agencies) the norms set out in the Protocol, supplemented by the dispute resolution systems of the Brasília Protocol;

(iii) National competition agencies will adopt measures to enhance cooperation with each other in order to implement the Protocol.

9. Decision 285 of the Commission of the Cartagena Agreement, establishing the Andean Pact, provides for the prevention of or remedies against distortions to competition resulting from the application of RBPs adversely affecting free competition. There are less far-reaching provisions in the Caribbean Community (CARICOM) Treaty. The free trade agreements between Canada and Chile, and among Mexico, Colombia and Venezuela, also contain provisions relating to cooperation on competition policy. Competition policy is also addressed in the Treaty Establishing the Common Market for Eastern and Southern Africa, and in the Traité de l'Union Douanière de l'Afrique Centrale. Very far-reaching cooperation on competition law and policy is provided for in the Australia-New Zealand Closer Economic Relations Trade Agreement. A forum for exchanges of views, technical cooperation and discussion of competition issues is provided under the aegis of Asia-Pacific Economic Cooperation (APEC); and a database of information on competition law in APEC countries is being set up. A similar mechanism for cooperation on competition policy has been created in the context of discussions on the establishment of a Free Trade Area of the Americas (FTAA).

G. Multilateral instruments

10. The sole universally applicable multilateral instrument in this area is the non-binding Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices, negotiated and implemented by UNCTAD. The cooperation aspects of the Set would be briefly reviewed. Non-binding "plurilateral" instruments adopted by the Organization for Economic Cooperation and Development (OECD) relating to competition law and

policy would also be covered. The latest Revised Recommendation of the OECD Council Concerning Cooperation Between Member Countries on Anticompetitive Practices Affecting International Trade - adopted in 1995 - provides, for instance, for notification, exchange of information, mutual assistance in investigations, coordination of investigations, positive comity, consultations, and a conciliation mechanism in the field of competition law enforcement. The 1998 OECD Recommendation concerning effective action against hard-core cartels recommends convergence and effectiveness of laws prohibiting such cartels, and international cooperation and comity in enforcing those laws. It is open to non-OECD member countries to associate themselves with this Recommendation and to implement it. The Uruguay Round Agreements, which are of course binding and subject to dispute settlement mechanisms, contain some provisions relating to cooperation in the area of competition law and policy.

Selected agreements on international cooperation in competition law and policy, and their provisions

	United States	Germany	European Union	New Zealand	Czech Republic	CIS countries
Australia	1981 - Exchange of information - Confidentiality - Consultations			1990 - Harmonization of competition law - Mutual assistance in enforcement		
Canada	- Notification - Consultation - Cooperation					
European Union	1991 - Notification - Exchange of information - Cooperation and coordination in enforcement activities				1995 - Consultations - Confidentiality - Joint review of cases, including preferential aid	
France		1984 - Exchange of information - Confidentiality - Consultations				

Germany	1976 - Exchange of information - Confidentiality - Consultations					
Eastern Europe Bulgaria, Czech Rep., Estonia, Hungary, Latvia, Lithuania, Poland, Romania, Slovak Rep., Slovenia			Model of "Europe Agreement" provides for harmonization of competition laws. EU competition rules apply to trade between parties			Bilateral cooperation agreement among member countries
Mediterranean Basin Tunisia, Morocco, Israel.			Rules based on EU competition rules apply to trade between parties			Experience sharing and harmonization of competition laws

H. Informal cooperation

11. Large numbers of contacts among competition authorities, exchanges of non-confidential information and technical cooperation activities take place on an informal basis. The main types of informal technical cooperation include: participation in seminars and training courses; visits to, or training attachments with, competition authorities in developed countries; short-term missions to countries needing cooperation, including analyses of their situation and needs, workshops, group training and assistance on particular issues or in the drafting of legislation; and long-term attachments of personnel from authorities of developed countries for training and advice purposes with authorities of developing or Eastern European countries.

I. Evaluation cooperation experience

12. In the light of information provided by Governments and other available information, an overall evaluation would be undertaken of experiences with respect to the implementation of cooperation agreements or of informal cooperation, and of the mechanisms used. Examples of both successes and failures would be discussed, illustrated where appropriate by reference to the procedures followed in individual cases (such as the Boeing/McDonnell Douglas, Ciba-Geigy/Sandoz, Citric Acid, Fax Paper, General Electric/De Beers, Lysine, Microsoft, Nielsen, Plastic Dinnerware or Sabre cases). Factors conducive to successful cooperation, and obstacles to cooperation, would be identified and

discussed. The latter may include differences in the objectives, substantive content, enforcement practices or procedures, jurisdictional scope or levels of expertise of competition laws or competition authorities; restrictions relating to the exchange of confidential information; lack of a formal cooperation agreement; the internal structure of competition agencies; insufficient planning and coordination of technical cooperation activities; lack of data; or lack of resources. In the light of this analysis, proposals would be made to strengthen, expand and make more effective international cooperation in this area.